

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARIO A. VALENZUELA,

Plaintiff,

v.

SANTIESTEBAN, *et al.*,

Defendants.

Case No. 1:20-cv-01093-NONE-BAM (PC)

**ORDER CLARIFYING DEADLINE TO FILE
RESPONSE TO COMPLAINT**

(ECF No. 21)

Response to Complaint Due: January 5, 2021

Plaintiff Mario A. Valenzuela (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This action proceeds against Defendants Santiesteban, Rodriguez, and Alejo for excessive force in violation of the Eighth Amendment and against Defendant Perez for failure to protect in violation of the Eighth Amendment, arising from the incident on June 22, 2019.

On October 23, 2020, the Court found service of the complaint appropriate and directed service on Defendants Santiesteban, Rodriguez, Alejo, and Perez under the Court’s E-Service pilot program. (ECF No. 14.) Pursuant to that order, the service order, summonses, and the operative complaint were served via email on the California Department of Corrections and Rehabilitation (“CDCR”). On November 6, 2020, CDCR filed a Notice of E-Service Waiver indicating that all Defendants intended to waive service. (ECF No. 18.) The California Attorney General’s Office timely filed a waiver of service of process for all Defendants on December 3,

2020. (ECF No. 21.)

Pursuant to the Court's E-Service Order, "[a] defendant who timely waives service need not serve an answer to the complaint until 60 days after the waiver of service of process was sent." (ECF No. 14, p. 3.) Further, "[f]or any defendant that the CDCR advises will be waiving service, the date the CDCR files its Notice of E-Service Waiver will be considered the date the request for waiver was sent." (*Id.*)

Defendants' waiver of service, as well as the Court's docket entry for the submitted waiver, incorrectly reflects that Defendants' answer or motion under Rule 12 is due within 60 days after December 3, 2020, or the date the waiver was filed. (ECF No. 21.)

By the instant order, the Court clarifies that pursuant to the October 23, 2020 E-Service Order, Defendants' answer or other responsive pleading is due within 60 days after November 6, 2020, the date CDCR's Notice of E-Service Waiver was filed. Should Defendants require additional time to respond to the complaint, they may file a motion for an extension of time setting forth good cause in support of the request.

Accordingly, IT IS HEREBY ORDERED that Defendants shall file an answer or other response to the complaint on or before **January 5, 2021**.

IT IS SO ORDERED.

Dated: **December 4, 2020**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE